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In the Supreme Court of the
United States

OCTOBER TERM, 1976

No. 76-804

GEORGE R. CAESAR, M.D.,
Petitioner,

vs.

LOUIS P. MOUNTANOS, as Sheriff
of the County of Marin,
State of California, et al.,
Respondent.

Reply Brief on Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

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Pursuant to Rule 24, subdivision 4, of the Rules of the Supreme Court of the United States, this Reply Brief is submitted, addressed to arguments first raised in the Response in Opposition to the Petition for Certiorari.

ARGUMENT

Although the Response also contains many other misstatements, this brief deals only with respondents' contention that Dr. Caesar lacks standing as to the issues presented in his Petition for Certiorari because his patient, Miss Seebach, voluntarily waived the psychotherapist-patient privilege. This argument, and the characterizations

of the Petition which are based upon it, consume the major portion of the Response. As shown below, however, the record does not support respondents' thesis; the record is, in fact, to the contrary.

Respondents' argument is based upon a letter which Raymond E. Bright, Miss Seebach's attorney, sent to the Court of Appeals after the Petition for Certiorari was filed in this Court. That letter, which is not a part of the record, is reproduced as Appendix B to the Response, and it does suggest that "*after* the Superior Court's ruling, plaintiff [Miss Seebach] has not claimed any privilege." (Emphasis supplied.) There are certain intimations to this effect in other letters, cited in Appendix B, which Mr. Bright sent to counsel inviting settlement of Miss Seebach's underlying personal injury litigation. Each of the cited letters was written after the contempt adjudication and while this case was pending before the Ninth Circuit Court of Appeals.

Until that time—well after Dr. Caesar had been adjudged in contempt—no clear suggestion of voluntary waiver had been made by Miss Seebach or her attorney. The record reflects that before he was deposed, Dr. Caesar met with Miss Seebach and Mr. Bright, and Miss Seebach acted ambiguously. To quote Dr. Caesar's deposition:

Q. You have discussed with Miss Seebach the fact that you have been subpoenaed and that this subpoena directed you to come here?

A. That is correct.

Q. When you discussed this fact with Miss Seebach, did she then orally give her permission for you to come and testify?

A. Miss Seebach cried when first asked about this. It took her a long time to reply and, finally, rather indirectly, I think, said something like "You will have to do it anyway."

I then asked her directly whether she was giving consent and she nodded.

Q. Nodded in the affirmative?

A. That's correct. I then asked her if I had my secretary bring in a form, which is a standard form in my office to give permission for the conveying of information to parties other than myself, and she replied that she could not sign.

Q. Did she tell you why she would not sign?

A. I asked her directly if she wished me, as she had said, to testify, why she would not sign. Now, she gave me no answer. (Deposition of Dr. Caesar, taken April 5, 1972, Attachment 1, Exh. D to Petition for Writ of Habeas Corpus, pp. 7-8.)

Thereafter, Miss Seebach's attorneys filed in the Superior Court a document entitled "Notice of Intention to Claim Psychotherapist-Patient Privilege Granted By Evidence Code Section 1014 and to Revoke Earlier Waiver, If Any, of Said Privilege." (Attachment 1, Exh. H to the Petition for Writ of Habeas Corpus.) That document remains the last formal statement of her position.

After his petitions for certiorari and hearing had been denied by the California Court of Appeal and Supreme Court, Dr. Caesar finally came again before the Superior Court for adjudication of contempt and sentence. (Attachment 5 to Petition for Writ of Habeas Corpus.) Mr. Bright appeared and took an ambiguous position as to whether Miss Seebach had waived the privilege. The Superior Court ruled that the privilege had been waived as a matter of law, due to the compulsion of Evidence Code Section 1016, so that it need not consider whether Miss Seebach had voluntarily waived the privilege. The Superior Court placed the issue before it in focus in the following words:

THE COURT: But, in any event, the problem of the patient's privilege is not with us, because I have ruled

that—that the patient has no right to assert the privilege having tenured [sic: tendered] the issue. (Attachment 5 to the Petition for Writ of Habeas Corpus, p. 7.)

Judge Hufstedler in the Court of Appeals explicitly recognized that this case has never involved any issue of voluntary waiver. As she stated:

We are not dealing with Seebach's actual waiver—which was revoked—but with the implied-in-law waiver made by claiming pain and suffering. (Appendix to Petition for Certiorari, p. 23 n. 5.)

Since the record shows that Miss Seebach has not voluntarily waived her rights as a patient, the Petition for Certiorari does not raise the question whether there is an independent and separate constitutional right of psychotherapists to be free of compelled disclosures in order to permit them to practice their profession. (*Cf. Doe v. Bolton*, 410 U.S. 179, 199 (1973); *Singleton v. Wulff*, U.S. (1976), and text of Petition for Certiorari at p. 6 n. 6.) Rather, the Petition challenges the abrogation by California Evidence Code Section 1016 of the patient's freedom to pursue her treatment while retaining her rights of privacy and exercising her rights as a litigant. The Petition seeks to vindicate the patient's constitutional rights to privacy of the psychotherapeutic session, due process and equal protection.¹ Dr. Caesar seeks no standing of his own and does not assert, as respondents would put it, "that the psychotherapist must be able to withhold information regardless of the wishes of his patient * * * reflect[ing] a paternalistic attitude * * *." (Response, 15.)

1. It is well settled that Dr. Caesar has standing to raise the constitutional rights of his patients. (*Griswold v. Connecticut*, 381 U.S. 479, 481 (1965); *Doe v. Bolton*, 410 U.S. 179, 188-9 (1973); *Planned Parenthood of Central Missouri v. Danforth*, U.S. (1976); *Singleton v. Wulff*, U.S. (1976); *In re Lifschutz*, 2 Cal.3d 415, 431-2 (1970).)

Respondents suggest that Dr. Caesar is asserting a right of psychotherapists superior and antagonistic to the claim of their patients. Such is not the case, as the Petition for Certiorari and the supporting amicus briefs make clear. Dr. Caesar contends that Section 1016 is unconstitutional in placing intolerable burdens upon patients and upon their healers, invading the patients' privacy. Nothing more was raised by him before this Court.

Finally, should the point be pertinent, Dr. Caesar is now here under sentence of imprisonment; and what is immediately before the Court now is his right to go free after he disobeyed the Superior Court's order to disclose treatment materials *solely* (as was pointed out above) under the compulsion of California Evidence Code Section 1016. Thus he is now asserting a direct and primary interest of his own, *i.e.*, that he should not be jailed for violating an unconstitutional law. (*Hensley v. Municipal Court*, 411 U.S. 345 (1973); *Doe v. Bolton*, 410 U.S. 179, 188-9 (1973).)

One final point: at page 8 of the Response, in a purported statement of the case, respondents make an offensive suggestion that is not supported anywhere in the record, to the effect that Dr. Caesar was obstructing both parties and that "[p]artly because of her experiences with Dr. Caesar, Miss Seebach was reluctant to meet with" a forensic psychiatrist engaged for the express purpose of giving testimony rather than treatment. The fact is that, as this examining psychiatrist testified, Miss Seebach told her that she had discussed her whole life experiences with Dr. Caesar and found his treatment helpful. (Attachment 1, Exh. C to Petition for Writ of Habeas Corpus, p. 18.)

The remaining contentions of the respondents are dealt with in the Petition for Writ of Certiorari.

CONCLUSION

It is regrettable that respondents have now sought for the first time to attack Dr. Caesar personally and thus to create a false picture of the issues which were before the Court of Appeals and which are presented by the Petition for Writ of Certiorari. The matters presented are objective and grave, and involve considerations of doctor-patient relations and patient privacy of the highest order, deserving the attention of this Court. The Petition for Certiorari should be granted and the contempt order annulled.

Respectfully submitted,

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